

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2249 - SB 2182

March 16, 2020

SUMMARY OF ORIGINAL BILL: Defines terms associated with and including “marketplace facilitator” and “marketplace seller”. Requires marketplace facilitators to collect and remit sales and use tax. Establishes that a marketplace facilitator is liable for sales and use tax when it facilitates sales of taxable items or services on behalf of marketplace sellers, unless: the marketplace facilitator has sales of \$500,000 or less in the previous 12 months, if substantially all of the marketplace facilitator’s marketplace sellers are already registered dealers and the facilitator obtains a waiver from the Commissioner of Revenue, or for marketplace sellers with over \$1 billion in gross sales in the United States, and the marketplace facilitator and seller contractually agree that the marketplace seller will collect and remit the sales and use tax. Requires marketplace facilitators to register with the Department of Revenue (DOR).

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue - \$84,848,400/FY20-21
\$113,131,300/FY21-22 and Subsequent Years

Increase Local Revenue - \$28,282,800/FY20-21
\$37,710,400/FY21-22 and Subsequent Years

The Governor’s proposed budget, on page A-35, recognizes a recurring increase in state revenue of \$44,820,500 to the General Fund.

SUMMARY OF AMENDMENT (017205): Deletes and replaces all language of the original bill such that the only substantive change is to establish that delivery network companies, as defined by this legislation, are not included in the definition of marketplace facilitators.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the corrected fiscal note.

Assumptions for the bill as amended:

- The effective date of the proposed legislation is October 1, 2020.
- In November of 2017 the United States Government Accountability Office (GAO) published a study on the collectible revenues from internet retailers and market place facilitators.
- Based on this study of potential collectible revenue, 38 percent comes from internet retailers and 46 percent from marketplace facilitators.
- As of October 1, 2019, out-of-state dealers with no physical presence in Tennessee and with sales exceeding \$500,000 in this state are required to register with the Department of Revenue and remit the sales and use tax.
- Based on information provided by the Department of Revenue regarding tax collections since October 1, 2019, the average annual tax collections from internet retailers are estimated to be \$185,982,592.
- The total potential online sales tax collections are estimated to be \$489,427,874 (\$185,982,592 / 38%); therefore, the collections attributable to market place facilitators are estimated to be \$225,136,822 (\$489,427,874 x 46%).
- The GAO's 2017 study estimates that 14 percent to 33 percent of third-party sales through marketplaces are already being collected. It is assumed that 33 percent of third-party sales through marketplaces are already being collected.
- The total recurring increase in sales and use tax revenue as a result of this legislation is estimated to be \$150,841,671 [$\$225,136,822 \times (100\% - 33\%)$].
- Based on the state and local sales and use tax collections from internet retailers, it is estimated that the effective breakdown will be 75 percent state and 25 percent local.
- Due to the effective date of the bill being October 1, 2020, the first fiscal year impact (FY20-21) will be equal to nine months of collections.
- The increase in state revenue is estimated to be \$84,848,440 [$\{[(\$150,841,671 / 12) \times 9] \times 75\%$ } in FY20-21, and \$113,131,253 ($\$150,841,671 \times 75\%$) in FY21-22 and subsequent years.
- The increase in local revenue is estimated to be \$28,282,813 [$\{[(\$150,841,671 / 12) \times 9] \times 25\%$ }, and \$37,710,418 ($\$150,841,671 \times 25\%$) in FY21-22 and subsequent years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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